
Government of the District of Columbia



Office of the Attorney General

Testimony of
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***FY 2006 Budget Request for the Office of the
Attorney General***

Committee on the Judiciary
Phil Mendelson, Chair
Council of the District of Columbia

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Introduction

Good afternoon, Chairperson Mendelson, Members of the Committee on the Judiciary, other Councilmembers, and guests. I am Robert Spagnoletti, Attorney General for the District of Columbia. It is my pleasure to come before you today to discuss the Fiscal Year 2006 budget request for the Office of the Attorney General for the District of Columbia (the “Office,” or “OAG”). Although they are not at the table, accompanying me today are Victoria Syphax, OAG’s Fiscal Officer, and Benidia Rice, Deputy Attorney General for the Child Support Services Division and Director of the District’s State IV-D Program.

On March 7, 2005, I appeared before this Committee to report on the performance of OAG during Fiscal Year 2004 and the first part of Fiscal Year 2005. I noted that, with a cadre of approximately 515 talented and hard-working attorneys and support staff, a streamlined organization, and a new-name – reflecting its state-like responsibilities and rededicated sense of mission – the Office had met or exceeded almost 80% of its performance measures and goals. I noted this outstanding achievement occurred in the face of a continuing increase in the number and complexity of the matters the Office handles, and despite severe resource constraints. These constraints include an inadequate personal services budget for attorneys and support staff, an insufficient non-personal services budget for litigation expenses, and an office space at One Judiciary Square that is cramped and dilapidated.

This is my first opportunity to address these concerns fully before this Committee in a budget setting. Therefore, let me take a few minutes to summarize the proposed Fiscal Year 2006 budget for the Office, explain how I plan to use the available funds, discuss the special challenges of this budget, describe how OAG may begin to reach its full potential, and suggest creative ways my staff and I are working to squeeze more out of existing resources. My goal is to build on OAG’s progress and successes so that it can achieve its full potential and truly become the premier law office the District government and its citizens need and deserve.

Overview of the Fiscal Year 2006 Budget

In total, as part of his core budget under the government-wide cap of 4.7% established by the Fiscal Year Budget Support Act of 2004, the Mayor has

proposed an operating budget for OAG of \$57,087,000 with 488 FTEs. This represents an overall decrease of 8.5% from the Fiscal Year 2005 approved budget of \$62,381,000 and a decrease of 27 FTEs from the current year's total of 515.

If we break out the revenue types for the overall core budget, the results are:

- **Local Funding** - Local funding is proposed at \$32,589,000 and 336 FTEs, an increase of approximately \$3.6 million, or 12.5% and 4 FTEs over Fiscal Year 2005 (which is \$28,979,000 and 332 FTEs). This change is primarily due to the long-overdue Legal Service pay raise that resulted from the eventual settlement between the government and the attorneys' union that I described in my oversight testimony in March. My staff and I are extremely grateful that, on the Mayor's recommendation, this Council ratified that settlement, making it possible for OAG attorneys to be paid an amount significantly more comparable to that of federal attorneys, as required by law. However, the proposed local personal services budget for OAG makes a cut from the Fiscal Year 2005 baseline budget of approximately \$1.43 million (that is, \$1,139,780 for attrition savings plus a 1% savings of \$292,289, for a total of \$1,432,069), on the assumption there is attrition or vacancy savings in the regular legal services program of the Office, which does not rely on federal grants as the Child Support Services Division ("CSSD") does. A cut of this magnitude translates into a loss of approximately 22 FTEs. Since OAG at any one time has at most one or two vacant and funded FTEs engaged in legal service operations, enactment of this cut will have significant negative consequences, as I discuss later.
- **Special Purpose Funding** - Special Purpose (or "O"-type) funding is proposed at \$6,444,000 and 10 FTEs, a decrease of approximately \$8.5 million, or 57%, and 24 FTEs from Fiscal Year 2005 (which is \$14,908,000 and 34 FTEs). This proposed funding level is actually slightly higher than the Mayor's proposal of \$5,881,000 back in March of 2004 for the Fiscal Year 2005 budget. This change is mainly due to a substantial decline, to approximately \$5 million, in anticipated revenue from the Temporary Aid to Needy Families ("TANF") Fund that is used to support various activities of CSSD, and the change affects primarily the level of personal and non-personal services within CSSD. The proposed special purpose

funding shown in the Mayor's proposal does not yet account for the addition of approximately \$1.2 million to the Anti-Fraud Fund due to the settlement agreement in the Cushman and Wakefield case that I noted on March 7th. I expect the Office of Research and Analysis to certify that amount to the Council before its vote and the transmittal of the approved budget request act to the President, allowing OAG to fill at least three additional FTEs for anti-fraud work.

- **Federal Grant Funding** - Federal grant funding, which is almost exclusively for CSSD, is proposed at \$15,663,000 and 119 FTEs, a decrease of approximately \$570,000, or 4%, and two FTEs from Fiscal Year 2005 (which is \$16,233,000 and 121 FTEs). This change is principally the product of a relatively small anticipated decline in expected federal grant funding for the Office's child support program, as well as reduced federal grant funding through the Justice Grants Administration. I will explain later that the Mayor's proposal includes funds beyond the core budget, for community investments in public safety and social support services, that will make up in local funding much of what would otherwise be lost to OAG by the reduction in funds from the Justice Grants Administration.
- **Intra-District Funding** - Intra-District funding, which last year derived from inter-agency MOUs and included local funds appropriated to other agencies, is proposed at \$2,392,000 and 22 FTEs, an increase of \$130,000, or 6%, and a decrease of seven FTEs from Fiscal Year 2005 (which is \$2,262,000 and 29 FTEs). The enhanced funding is largely due to the increase in Legal Service pay, while the reduction in FTEs is caused by the net effect of more agencies withdrawing funding. At the same time, the amounts included to date are preliminary and subject to supplementation before the Council's vote on the budget. As of now, the key facts concerning the proposed intra-District funding for next year are:
 - Office of Zoning continues to fund one FTE (\$119,000);
 - Department of Housing and Community Development continues to fund nine FTEs (approximately \$1 million);
 - Office of Planning reduces funding from four to two FTEs (approximately \$183,000);
 - Metropolitan Police Department ("MPD") continues to fund one FTE (\$119,000);

- Department of Human Services (“DHS”) continues to fund three FTEs (\$339,000);
- Department of Youth Rehabilitation Services (“DYRS”) continues to fund three FTEs (\$262,000);
- Alcohol Beverage Regulation Administration ceases funding to combat underage drinking;
- Office of Tax and Revenue continues to fund one FTE;
- Department of Insurance, Securities and Banking (“DISB”) continues to fund one FTE (\$132,000);
- Department of Health ceases funding of two FTEs; and
- Department of Public Works (“DPW”) reduces funding from two to one FTE (\$65,000).

To summarize, of the total amount proposed for OAG’s core operating budget, approximately \$31.4 million, or 55% of the total and 311 FTEs, would support the Office’s regular legal services program, including litigation, advice-giving, and transactional assistance. However, as this Committee knows, the largest single program at OAG, the child support program, also consumes the largest portion of OAG’s appropriations. That has been true since OAG first assumed the responsibility for the child support program in 1998. Thus, of OAG’s proposed core operating budget for next year, approximately \$25.6 million and 177 FTEs would be dedicated to CSSD. As in the current year, this will represent approximately 45% of OAG’s entire core operating budget.

OAG Budget and the 2006 Strategic Plan

I pointed out during my testimony last year on the Office’s proposed Fiscal Year 2005 budget that, for purposes of performance-based budgeting, the existing breakdown of programmatic areas – including Legal Advice, Litigation, Management, and Transactions – did not correspond to the way the Office is structured and impaired OAG’s ability to effectively participate in performance-based budgeting. By contrast, the Office’s new strategic plan for Fiscal Year 2006, which you have, does reflect how we operate. The Mayor’s proposed core budget for Fiscal Year 2006 is based on that new plan.

Programmatic highlights of the proposed core budget include:

- Agency Management, which supports OAG as a whole through the personnel function, employee training, contracting and procurement, property management, information technology, risk management, communications, and customer service, would have a total budget of approximately \$4.4 million and 20 FTEs. All this funding would be local.
- Agency Financial Operations, which provides financial management services to the Office, would have a total budget of \$625,456 and eight FTEs. This appropriation would be composed largely of local funding, although a small part would be by federal grant funds. Unfortunately, the transfer of this program to the Office of Finance and Resource Management (“OFRM”) never materialized, as planned, after approximately \$158,000 and three FTEs were shifted from OAG’s Fiscal Year 2004 appropriation to that of OFRM; and neither the Fiscal Year 2005 approved budget nor the proposed Fiscal Year 2006 budget rectify this anomaly. As a result, OAG encumbers for the financial program three FTEs and related funding that is needed elsewhere in the Office. Importantly, OAG’s fiscal team supports three other agencies without any monetary contribution from those agencies.
- Appellate, which handles all of the government’s appellate litigation in administrative, civil, and criminal cases, has a proposed budget of approximately \$1.4 million and 13 FTEs. It is all locally-funded.
- Child Support serves more than 90,000 District children and their families by providing for the establishment of paternity, child support orders and medical support orders, the enforcement of support orders on behalf of the custodial parents, the collection of child support payments from non-custodial parents, and since 2004, the distribution of these payments to custodial parents. The child support program would have a total budget of approximately \$25.6 million and 177 FTEs, as I already described. Of this amount, approximately \$1.2 million would be locally-funded, approximately \$5 million would come from special revenue (the TANF Fund), and the rest would be federal-grant-funded.
- Civil Litigation, which handles most of the defensive litigation brought against the District government, its agencies, and its

employees when they are sued in their official capacity, would have a wholly locally-funded budget of approximately \$6.5 million and 74 FTEs.

- Commercial Transactions provides legal advice and transactional support to the government in the principal areas of land use, procurement, real estate and finance, as well as advice, transactional, and litigation assistance concerning tax and bankruptcy. It lately has been heavily engaged with advising government policy-makers in the complex negotiations with Major League Baseball. The commercial transactions program would have a budget of approximately \$3.6 million and approximately 38 FTEs. The bulk of this program's funding, approximately \$2.2 million, would come from local revenues, although a significant portion, approximately \$1.3 million, would consist of intra-District funding from the Department of Housing and Community Development, the Office of Tax and Revenue, the Office of Zoning, and the Office of Planning, as noted earlier.
- Family Services represents the District and the Child and Family Services Agency in all child protection cases, provides direct legal representation to the majority of domestic violence victims seeking civil relief by appearing at one of the two Domestic Violence Intake Centers in the District, and provides advice, litigation, and representation services to the Department of Mental Health and the Mental Retardation and Developmental Disabilities Administration of the Department of Human Services. The family services program has a proposed budget of approximately \$5.6 million and 69 FTEs. Aside from an intra-District sub-grant under a Justice Grants Administration Violence Against Women Act grant in the amount of \$153,000 to fund three FTEs, all of this program's funding would be local.
- Public Safety is responsible for all affirmative civil and criminal litigation on behalf of the government and operates the Office's Criminal Section (misdemeanor adult quality-of-life crimes and criminal traffic code offenses, including drunk-driving), the Civil Enforcement Section (collections on behalf of the District government, welfare fraud cases, and enforcement of the District's False Claims Act), the Consumer and Trade Protection Section (consumer protection, antitrust, tobacco settlement, and charities

enforcement), the Juvenile Section (enforcement of everything from juvenile auto theft to juvenile murder), and the Neighborhood and Victims Services Section (support to the District's Neighborhood Services Initiative and services to victims of crime). The public safety program would have a total budget of approximately \$6.4 million and 64 FTEs. Of this amount, approximately \$4.3 million is locally-funded, approximately \$1.4 million is derived from special revenues (*i.e.*, the DUI, Anti-Fraud, Antitrust, and Consumer Protection Funds), and the rest comes from approximately \$720,000 in intra-District funds from MPD, DHS, OTR and DYRS, as described earlier. We expect the Office of Research and Analysis will certify an additional approximately \$1.2 million for anti-fraud work before the Council completes its budget deliberations.

- Legal Counsel, which provides advice, legislative-drafting, and rulemaking-drafting assistance to the Mayor, department heads, other Executive officials and, at times, to this Council and the District Courts, would have an approximate budget of \$1.1 million and 10 FTEs, funded largely from local revenues, with one FTE funded by DISB.
- Policy and Operations Oversight encompasses OAG's Immediate Office, including the Attorney General, the Chief Deputy, the Deputy for Agencies and Legislative Affairs, the Deputy for Family Law, the Deputy for Professional Development, the Deputy for Labor Relations, the Chief of Staff, the Freedom of Information Officer, the Government Ethics Counselor, the Public Affairs Officer, and related staff. The proposed budget for this program, which derives totally from local revenues, is approximately \$1.7 million and 16 FTEs.

These program budgets cover both personal and non-personal services. Because as a law office OAG is a labor-intensive operation, fully 71% of the total proposed core operating budget is devoted to personnel costs, while just 29% of the total is earmarked for non-personal services, such as contracts, equipment and equipment rental, space rental, supplies, security, and utilities.

During my testimony on March 7th, I emphasized that OAG is the primary and the only tenant at One Judiciary Square whose space has not been re-painted and re-carpeted since the building went into service almost 13 years

ago. The conditions on many of the levels OAG occupies, especially the sixth and tenth floors, are abominable. Moreover, the layout of the floors is obsolete for our current needs, resulting in a huge waste of space. While we are employed by the District government and not a Fortune 500 company, these working conditions are unacceptable, and the proposed Fiscal Year 2006 capital budget for the Office of Property Management includes \$4.8 million for the renovation of OAG's space at One Judiciary Square. I enthusiastically welcome this proposal and ask that you support it.

The proposed core budget also addresses two important unmet needs of the District's child support program.

First, CSSD's automated child support system needs to be replaced, and CSSD plans to award a three-year contract to a highly-regarded consultant to perform a feasibility study for an alternative child support computer system, to evaluate each alternative through a detailed cost-benefit analysis, and ultimately to identify and recommend the best alternative system. The budgeted amount for this work, including the development of a proposal for federal approval of the alternative system as well as a request for proposals to acquire the recommended alternative, is approximately \$2.1 million.

Second, CSSD needs staff to enforce the non-custodial parent initiative set out in the pending budget support act. That initiative would expand eligibility for the District's earned income tax credit to non-custodial parents between 18 and 30 years old who qualify for 50% of the match of the federal earned income tax credit and are current on their support payments. It is designed to encourage young, low-income non-custodial parents to maintain regular employment and stay financially involved with their families. The proposed budget would allot \$100,000 for CSSD to hire staff who could verify a non-custodial parent's child support compliance for purposes of this new tax credit.

That is not all. Besides the proposed core budget, the Mayor has included additional funding with respect to four initiatives at OAG that fall outside the core budget but nevertheless meet the stringent criteria for his District-wide community investment program. These four initiatives are:

- State Disbursement Unit ("SDU"). Under Title IV-D of the federal Social Security Act, every state, including the District, is required to operate a state-wide child support distribution system. As already

mentioned during my oversight testimony on March 7th, up until very recently, the distribution function in the District was handled by the Superior Court of the District of Columbia. Pursuant to the Council's Fiscal Year 2005 Budget Support Act of 2004, this function was transferred to OAG and CSSD contracted with an experienced vendor and successfully implemented the SDU in 2004. Recognizing the financial pressure this new function places on CSSD, the Council this year passed emergency and temporary legislation – and is now considering a follow-on permanent bill – to authorize OAG's expenditure of up to \$1.5 million from the government's operating cash reserve for the implementation of the SDU during the current fiscal year. My Deputy Attorney General for CSSD, Benidia Rice, and I are very grateful for this critical assistance. In keeping with that commitment, the Mayor's proposed budget for OAG in Fiscal Year 2006 includes another \$1.5 million in local funding for the contract with the SDU vendor. The SDU has begun with stellar efficiency, processing up to 1,000 support checks per day with just a 12-hour turnaround from receipt to payment to custodial parents. In addition, the proposed budget includes \$500,000 in local funding and 12 FTEs to assist CSSD to not only monitor the SDU contractor, but also to leverage the 67% federal contribution toward that amount, or \$970,589 and 23 FTEs, for other essential child support activities, such as improving data reliability, information technology, medical support enforcement, and wage withholding.

- Child Support Pass-Through. The Fiscal Year 2006 Budget Support Act of 2005 that the Mayor transmitted to the Council on March 21st contains a provision that would reinstate the \$50 per month pass-through and disregard of child support paid to families receiving TANF assistance. As you know, before 1996, federal law required child support agencies to distribute to a family receiving Aid to Families with Dependent Children ("AFDC," now TANF) the first \$50 in current support that the non-custodial parent paid each month; and also to disregard this payment in determining eligibility for assistance. This was an exception to the general rule allowing the states to retain a designated portion of the child support paid on cases involving families receiving AFDC. Starting in 1996, federal law no longer required states to pass through and disregard the first \$50 in child support collected, and many jurisdictions – including the District – eliminated the pass-through and disregard, based in part on cost.

Because the federal government does not participate in the pass-through, states that continue it must fully absorb it and transfer the 50% federal share to the federal government out of local funds. While OAG supports reinstatement of the \$50 pass-through, doing that will be costly – including the amount of the pass-through itself (\$50 per month for each TANF family receiving payments), payments to the federal government of the federal share of TANF collections, lost matching funds, and system reprogramming costs. Therefore, the Mayor has included in OAG's proposed budget for Fiscal Year 2006 a total of \$1,474,500 to cover these costs.

I hasten to add that, even if we received an appropriation to fund the pass-through as early as this summer, the updating of CSSD's automated system to implement the pass-through would require at least six months to complete. Also, to be eligible to receive federal reimbursement for these system changes, we must develop a written proposal, outlining the costs and benefits (called an Advanced Planning Document Update), and submit it for federal approval. To save time, we are already preparing that proposal. However, to accommodate the system reprogramming, I ask that, in its consideration of the pass-through legislation, the Council add a delayed applicability date of at least six months from the enactment. Together with the usual condition concerning the availability of appropriations, such an applicability date will ensure that CSSD has the necessary system in place to carry out the Council's intent.

- Replacement of Federal Grants. A full 40 of the Office's FTEs are currently funded by intra-District transfers of local revenues appropriated to other District agencies or sub-grants under federal grant programs to such agencies. Cutbacks in federal grants under the Bush Administration jeopardize many of these FTEs in Fiscal Year 2006. Eight FTEs in the Public Safety Program will be lost without substitute local funding. To address the problem, the Mayor proposes to replace part of the federal money with local revenue. This means saving four FTEs in the Neighborhood and Victim Services Section, now paid for through a Byrne grant, who provide support to the victims and witnesses of our violent juvenile offenses. This also means preserving four additional FTEs in our Criminal Section who are paid through a Byrne grant and handle Community Court, drunk

driving, and anti-fraud duties. The total funding for these eight FTEs is proposed at \$817,038.

- ProLaw System Update. The ProLaw case/matter management system that OAG instituted during 2001-2002 is working extremely well, but needs to be updated in light of technological advances and OAG's restructuring. We plan to integrate ProLaw with several outside applications such as document management, IJIS, WALES, and JUSTIS. We also plan training for our in-house trainers on the updated ProLaw application. The Mayor's proposed budget for this enhancement is \$425,000.

I cannot strongly enough urge this Committee and the Council to give their complete support to these critical initiatives!

Challenges Posed by the Proposed Fiscal Year 2006 Budget

Let me take a minute to give some perspective to the Mayor's Fiscal Year 2006 proposal for OAG. Like many other District agencies impacted by the financial pressures of the last several years, OAG's annual budgets have been unpredictable and subject to significant and detrimental cuts. The annual budget for the Office has not consistently kept pace with inflation or the demands on us, in light of the steady upward trend in both the number and the complexity of legal matters we handle.

Our experience since Fiscal Year 2000 is instructive. During the roughly five-year period 2000-2005, OAG's total workload has increased approximately 50%. Former Corporation Counsel Robert Rigsby testified in early 2001 that the Office annually handled approximately 14,000 active matters before it involving over 300 different statutory provisions and 60 different legal functions in the areas of public protection, civil enforcement, defensive litigation, court appeals, commercial transactions, legal advice, procurement, personnel, tax, bankruptcy, land use, and regulation. As I testified at the March 7, 2005 oversight hearing, this number has grown, until today it is approximately 22,000.

The Office was already significantly under-resourced in Fiscal Year 2001. Indeed, independent studies by two consultants, Hildebrandt International and the D.C. Appleseed Center in late 2000 recommended major infusions of personnel to grapple with the 14,000 matters on the Office's plate.

Hildebrandt determined that the Office needed 285 additional people (attorneys, paralegals, secretaries, etc.) to carry out its duties and workload in terms of legal services unrelated to the child support program, with approximately one-third of the new positions for attorneys. D.C. Appleseed did not address total numbers, but did believe we needed a significant infusion of support staff. In fact, it is the common practice of OAG attorneys to do their own copying, document production, cite-checking, and other tasks more economically handled by skilled support staff, simply because we lack the resources. Many attorneys have neither paralegal nor secretarial support.

Given how far behind we already were from where we should have been in 2000 and the 50% jump in workload since, the erratic budgeting for the Office since 2000 has hardly kept up with our needs. The figures speak for themselves. In Fiscal Year 2000, the Office had an authorized budget of approximately \$48 million and 513 FTEs. The proposed budget for Fiscal Year 2006 is approximately \$57 million and 488 FTEs – an increase in funding, unadjusted for inflation, of only 18%, and an absolute significant decrease in FTEs. There have been ups and downs in between these timelines, but the essential fact is that, like the legendary king of Greek mythology, Sisyphus – who was condemned to roll a heavy rock up a hill in Hades only to have it roll down again as he neared the top – the Office has struggled upward only to fall behind where it needs to be in terms of the staff required to do the vital job entrusted to it. Time has validated the accuracy of the recommendations by Hildebrandt and D.C. Appleseed that the Office must hire many more lawyers and support staff to fulfill its potential and to meet its mission.

Current day-to-day experience with the Office's staffing levels and workloads confirms the conclusions of these earlier studies. Here are some current examples of the Office's understaffing:

- OAG's Public Safety Division has a total of 31 attorneys handling approximately 14,000 criminal and juvenile delinquency matters annually. By contrast, the Office of the United States Attorney for the District of Columbia ("OUSA") has 175 attorneys handling approximately 18,000 local offenses.
- OAG's Appellate Division has nine line attorneys and two supervisors handling all of the District's appellate cases – encompassing civil,

criminal, family, and administrative cases – while the OUSA has 30 appellate lawyers – almost three times as many – handling primarily criminal cases.

- OAG's Civil Litigation Division had only 34 line attorneys and eight supervisors in Fiscal Year 2004 who handled over 680 new cases and more than 260 new claims, averaging 26 cases per attorney, with many of the attorneys assigned to complex class action equity cases such as *Jerry M., Blackman-Jones, Petties, Evans, LaShawn A., Dixon, Abbate v. D.C.* (arising from the arrests at Pershing Park in 2002), *CSX, Inc. v. D.C.* (challenging the constitutionality of the Council's recently enacted Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005), and *Pharmaceutical Care Management Association v. D.C.* (challenging the constitutionality of Title II of the Council's AccessRx Act of 2004).
- OAG's Neighborhood and Victim Services Section works closely with the CORE teams out in the eight city wards to identify problems and help design solutions, but it struggles to keep up with these CORE meetings with only three attorneys responsible for all eight wards.
- OAG's Procurement Section has only two line attorneys and one supervisor handling the review of all proposed subordinate agency contracts that are multi-year or for more than \$1 million, the defense of all protests before the Contract Appeals Board, and day-to-day advice on procurement law to Executive Branch officials.
- OAG's Domestic Violence Section has only four line attorneys and one supervisor representing the great majority of the 3,549 people who signed up for services at the Domestic Violence Intake Center at the Superior Court of the District of Columbia and the 1,565 people who signed up for services at the satellite Domestic Violence Intake Center at Greater Southeast Community Hospital in 2004.
- OAG's Legal Counsel Division has one supervisor and the equivalent of only eight line attorneys who prepared almost 1,300 legal memoranda in Fiscal Year 2004 and provided oral advice in thousands of other matters.

- OAG's staffing assignments are so tight, and the need for more people is so great, that a number of attorneys hold assignments in several divisions, spending part of their time in one division and the remainder in the other.

I have said it publicly many times before – and I will say it again: the many talented men and women of the Office daily invest their heart and their soul, despite often crushing workloads, and the proof of that is in the report I gave on March 7th concerning their performance, which met or exceeded almost 80% of the Office's measures and goals during Fiscal Year 2004. Their outstanding success and productivity, however, should not lull anyone into believing OAG no longer needs many, many more people. It most certainly does.

I, of course, support the Mayor's budget proposal for OAG in Fiscal Year 2006. At the same time, I recognize the enormous challenge it poses to the Office. In particular the proposed reduction of approximately \$1.43 million in local funding for supposed attrition in personal services is, in the case of OAG, based on the premise that there are enough unfilled but funded vacancies to cut out this funding without also eliminating people. This may be a correct assumption for other District agencies. However, OAG's staffing patterns do not fit that stereotype. As I pointed out in my March 7th testimony, OAG spent all of its Fiscal Year 2004 local budget but for approximately \$91,000 of its personal services budget. That means that less than 0.3% of OAG's local budget went unspent, a result showing how tightly its financial managers controlled its funds and how desperate it was to hire more people. There was, and is, little fat in OAG's budget, and the proposed cut of \$1.43 million will harm the Office's bone and sinew. That would undermine the efforts the Mayor and this Council have made – most recently through the approval of a long overdue and much appreciated pay raise for Legal Service attorneys – to retain and to attract the best and brightest attorneys to the District government. Therefore, whether the restoration of the \$1.4 million cut is considered an enhancement or a restoration of the Fiscal Year 2005 baseline for locally-funded personal services, I urge this Committee and the Council to consider solutions to this budget shortfall.

Reaching OAG's Potential

The Committee has asked, in the questions presented in advance of the Oversight hearing, what OAG would need to reach its potential as the District's premier law firm. Certainly, the restoration of the \$1.43 million cut would ensure the maintenance of all OAG's legal services at current levels. In a perfect world, OAG could certainly utilize the additional lawyers and support staff contemplated in the Hildebrandt report. There are, however, a number of modest enhancements which could be put in place in 2006 and would pay significant dividends for the OAG, the District, and its citizens. They are:

- Public Safety Division – Criminal and Civil Law Enforcement.
Despite the breadth of its responsibilities and the large volume of its cases, OAG's Public Safety Division has only 31 attorneys and fewer than 20 support staff, including paralegals, victim advocates, and secretaries. Even with the shift from federal to local funding of eight of the Division's NTEs as described earlier, and despite the availability of an enlarged Anti-Fraud Fund for civil false claims and some continued intra-District funding for seven FTEs in the areas of civil forfeiture, welfare fraud, and youth rehabilitation, the Public Safety Division remains woefully under-funded to meet its broad mandates. For example, based on our experience, the addition of three FTEs (two attorneys and one paralegal) to the current staff of four FTEs (three attorneys and one paralegal) who bring criminal prosecutions for tax fraud, welfare fraud, unemployment compensation fraud, employee overtime fraud, and tuition fraud would generate, conservatively, at least another \$2.5 million in fines and significantly improve deterrence. The recovery in Fiscal Year 2004 as a result of the tax fraud prosecutor, funded by the Office of Tax and Revenue via an MOU with OAG, is illustrative. While the total cost of dedicating an attorney to prosecute tax fraud cases is under \$100,000 annually, in just six months this attorney had already developed a caseload involving more than \$1.4 million and recovered over \$200,000 for the District. The addition of three FTEs for the prosecution of criminal fraud would cost only \$387,725 and so would be an exceptionally effective investment.

Likewise, OAG's Juvenile Section, which prosecutes all juvenile offenses in the District, is losing a substantial portion of its Justice

Assistance Block Grant funding in Fiscal Year 2006, amounting to four attorney FTEs, the Criminal and Civil Enforcement Sections are losing federal funding for one attorney to prosecute non-compliant ABC establishments, and the Neighborhood and Victim Services Section is losing one federally-funded staff assistant in the crime victim and witness assistance program. None of the proposed personal services budget compensates for these losses, which amount to \$482,009. Although less quantifiable than criminal fraud, the damage to the District's economy, and its residents, as a result of limits to OAG's ability to prosecute juvenile offenders, seek restitution for crime victims, and prosecute drunk drivers and other misdemeanor quality of life offenses is certainly no less significant. Moreover, continued under-funding on this scale aggravates the risk that dangerous criminals will not be deterred from future offenses.

- Civil Litigation Division – Creation of Contracts and Litigation Support Units and Addition of Funds for Litigation Services. As I previously noted, the 42 attorneys in the Civil Litigation Division are responsible for defending the District in complex class actions and other litigation that challenge and potentially impact the operations, practices, and policies of the District government. The studies by Hildebrandt and D.C. Appleseed found that the Office faces no more daunting task than right-sizing the depleted ranks of its attorney and support staff who handle these duties.

My first suggestion regarding civil defensive litigation is to consolidate once again all contracts litigation into a separate section. This consolidation would reflect the unique technical expertise required to handle a large number of cases in which the District's contract damage exposure can range up to tens of millions of dollars per case. I recommend the hiring of two additional contract litigation attorneys and a senior manager with the requisite background as chief of the new section. My second suggestion is to hire an additional three paralegals to handle not only contract cases but to assist with all the other litigation in the Division. As the Committee knows, the complexity and breadth of the cases in the Division demands the production and maintenance of voluminous documents, and the Division is in dire need of more support for that activity. The increase to the proposed personal services budget required to accommodate the

new contract law section and the additional paralegals would be \$448,857.

My third suggestion is the creation of a Litigation Support Unit to serve all areas of the Office with large-scale copying and scanning, preparation of exhibits, reproduction of photographs and charts, preparation of the thousands of purchase orders that are issued each year, and other relatively routine matters associated with litigation that paralegals and even attorneys often are now inefficiently doing themselves. The total cost of the Litigation Support Unit would be \$113,427.

My last suggestion is to incorporate a more realistic amount into the proposed budget for non-personal services to cover the current level of need for litigation-related services such as expert witnesses, depositions, hearing transcripts, and the like for the entire Office. Funding for these services was reduced by \$300,000 in the Office's Fiscal Year 2003 budget as part of the government-wide deficit reduction and has never been restored, although the cost of these services has risen dramatically since then. We have faced large shortfalls for these services and made Herculean efforts to find extra money two years in a row. At the end of last year, approximately \$571,000 was reprogrammed from the Settlements and Judgments Fund ("S&J Fund") for this purpose. This year, the Council passed the emergency and temporary versions of the Fiscal Year 2005 Operating Cash Reserve Allocation Act of 2005, which allot \$360,000 for additional litigation expenses for two cases arising out of recently-enacted legislation. Shortly, I expect the Mayor will transmit a request to reprogram \$900,000 from the S&J Fund for these expenses. We need to plan for next year and increase the amount included in the budget for litigation support.

Plans For Squeezing More Benefit From Existing Resources

We are maximizing the use of available funds and making substantial improvements in achieving our goals. I have already described the Office's streamlined and leaner organization. I have noted the attorney pay raise, which is cost-effective in attracting and retaining the best available legal talent. Let me briefly note a number of other areas where we plan to squeeze more benefits from the limited dollars available.

- Attorney General Consolidated Control Over Subordinate Agency Counsel and Budgets. There are currently approximately 90 attorneys, in 23 subordinate agencies, who are in the Legal Service and under my direction and control. These attorneys nonetheless remain employees of their agencies, on their agencies' payrolls, with a dual reporting relationship both to the Attorney General and to their agency heads, who exercise daily oversight. Their agency heads – instead of the Attorney General – decide how much budget to recommend and on what projects to spend scarce legal service dollars.

The Legal Service Establishment Act of 1998 was a major advance toward a unified cadre of District government lawyers. However, it is not enough. It perpetuated a bifurcated legal service, where OAG has formal, but less practical, control. Thus, any one agency can affect the overall allocation of legal resources by choosing to fund, not fund, or de-fund, any particular legal service position; and by setting priorities for agency attorneys. For example, there is little relationship between the number of lawyers in an agency, and the total number of agency employees or total agency budget. Furthermore, the great majority of agency counsel offices spend significant time on non-legal functions, and the Attorney General is virtually powerless to change that. A similar waste of legal resources occurs due to duplication of effort and waste when the attorneys in one agency attempt to address an issue better handled by attorneys with specific expertise in another agency. The Attorney General should be the one to make budget recommendations for subordinate agency counsel and to allocate appropriate funds and FTEs among these agencies based on the legal service needs of the government as a whole.

A comprehensive study of agency counsel that OAG completed earlier this year reveals these and numerous other incongruities. We also found, for instance, that subordinate agency attorneys spend an average of 11.3% of their time in drafting legislation and rulemaking. This translates into approximately 9-10 subordinate agency attorneys. If the Attorney General had the control I envision, 9-10 subordinate agency counsel with relevant experience could be dedicated to performing these functions exclusively. This would significantly reduce the back-and-forth that currently takes place between OAG

and agency counsel, cutting delay and inefficiency while vastly improving quality.

The Mayor has submitted the Fiscal Year 2006 Budget Support Act of 2005 (“BSA”), which contains a proposal in Title III(B) that OAG drafted to address the problems I just described. Starting in Fiscal Year 2006, the BSA would provide for Legal Service attorneys employed by subordinate agencies to be transferred to the employment and control of OAG. When this proposal was being developed it was already too late to re-write agency budget proposals to include all the Legal Service funds and FTEs in OAG’s proposed budget. Therefore, while the subordinate agencies would remain responsible for compensating Legal Service attorneys out of their own budgets during Fiscal Year 2006, the BSA would authorize OAG to manage the Legal Service portion of their budgets. And, while anticipating that the Legal Service portion of these budgets will be folded into OAG’s Fiscal Year 2007 budget, the BSA would grant the Attorney General continuing authority to manage subordinate agency Legal Service budgets, if that did not happen.

I urge this Committee and the Council to enact this proposal as a badly needed restructuring of the fundamental relationship between OAG and subordinate agency attorneys.

- Anti-Fraud, Antitrust and Consumer Protection Enforcement. OAG’s anti-fraud, antitrust, and consumer protection activities are, by their very nature, highly cost-effective because they are supported by a revolving fund into which all the eligible proceeds of OAG’s enforcement activities in these three areas are deposited. As a result of tax fraud and civil false claims cases in the past year, the Anti-Fraud Fund now has over \$1.2 million in it, an historic high. Once we have an appropriation for the next fiscal year, this fund can be used to hire staff dedicated solely to civil and criminal false claims work. Because we experienced such a sudden upward spike in revenue for which there is no precedent, we will initially be cautious in hiring new staff from the fund, starting with two attorneys and either one paralegal or one investigator. In light of the consistently large balances in the Antitrust and Consumer Protection Funds – collectively they now contain approximately \$1.4 million – I have become more aggressive in hiring antitrust and consumer protection

staff to get the most value from available dollars. We currently use these funds for three consumer protection attorneys, one consumer protection specialist, and two antitrust attorneys as well as for part-time short-term paralegal assistance. One of the three consumer protection attorney positions was added during the current fiscal year, and I plan to add one more antitrust attorney position by the end of the fiscal year.

- Training for Attorneys and Support Staff. The Legal Service Establishment Amendment Act of 1998 and its implementing rules recognize the importance of a robust and cutting-edge in-house training program for attorneys and support staff. Unfortunately, for many years OAG's authorized budget for training has failed to meet the aspirations of this law, and the proposed budget for next year will continue at only \$62,000 in non-personal funds, and personal services funds for one FTE, the training coordinator. These resources are stretched extremely thin to cover all 515 attorneys and support staff in OAG and the approximately 90 Legal Service attorneys in the subordinate agencies. In short, we have the unenviable task of eking out a substantial training program at the average rate of \$102 per person. Yet, despite the long odds, year after year OAG has presented a spectacular training program, with a host of subjects. Subjects have included: witness preparation; Legal Service Act and Rules; expert witnesses; understanding hearsay; legislative drafting; legal writing for attorneys; Government Ethics; and professional ethics. Eighty to 85% of OAG's courses are provided on a no-cost basis to OAG. We rely on volunteers consisting of Superior Court Judges and Magistrate Judges, the Council's General Counsel, the Center for Workforce Development, the U.S. Department of Justice and U.S. Attorney's Office, senior staff at OAG, other employees of the District government, and the private bar. As a result, a large volume of training opportunities is advertised monthly to staff. We expect to do the same next year.
- Pro Bono Legal Assistance from the Federal Government and the Private Bar. The District's personnel law allows the assignment of willing federal attorneys to OAG without cost, and the local rules of professional conduct encourage private lawyers to assist OAG, *pro bono*, by exempting them from certain conflicts rules that would otherwise apply. Several years ago, the Mayor issued an Order

delegating to OAG his authority to accept donations of services with respect to private *pro bono* attorneys who volunteer to assist OAG. As a result, OAG has enjoyed some success in attracting free legal talent, including the one-year no-cost detail of an experienced consumer protection attorney from the Federal Trade Commission, the attorneys from a local law firm and two non-profit organizations who worked on the case against the gun industry (*D.C. v. Beretta USA Corp.*), the many law firm associates who have performed six-month stints in our child protection unit, and the extraordinary efforts by the D.C. Appleseed Center in the case challenging as unconstitutional the congressional prohibition against the Council's enactment of a local non-resident income tax (*Banner v. U.S.*). Given our scarce resources, OAG's Deputy Attorney General for Professional Development will continue to reach out for more such assistance next year.

Technical Changes to the Proposed Budget Request Act

Two technical changes that OAG requested are included in Bill 16-197, the "Fiscal Year 2006 Budget Request Act of 2005." First, this year's budget request act would make permanent the requirement for the D.C. Courts to transfer, and authority for OAG to use, all fines that the Courts levy and collect in drunk-driving cases. This change will eliminate the need to repeat this provision each year.

Second, the budget request act would clarify the intent of this year's appropriations act provision that caps, at \$4,000, the total amount of private attorney's fees that can be charged the government in any action brought against the D.C. Public Schools under the Individuals with Disabilities Education Act. The same provision appeared in several earlier appropriations acts. Attorneys who represent the plaintiffs in these cases argue that the \$4,000 cap only relates to appropriations for a single year and doesn't prevent them from obtaining reimbursements in increments of \$4,000 out of later years' appropriations, until the entire amount of their fees (when the fees exceed \$4,000) have been paid for the same case. The proposed change would firmly lay that erroneous argument to rest. The proposed change would also eliminate uncertainties created by the recent decision in *Kaseman v. D.C.*, Civ. No. 03-1858 (D.D.C. January 6, 2005), now being appealed by the District, which concluded that while the \$4,000 fee cap applied to administrative hearing representation, the same fee cap applied separately – as a second \$4,000 allowance – to follow-on court

proceedings for fees. This result conflicts with the original intent to apply the \$4,000 fee cap to all proceedings in the same case. The proposed change would make that intent clearer.

Conclusion

As the Committee can see, OAG is maximizing the use of available resources and making substantial improvements in achieving our goals of saving the District millions of dollars, protecting the public, and ensuring that the District's leaders have the best available advice. However, OAG has too few attorneys, too few support staff, and too little money to provide them with the physical support they need to reach their full potential. I hope my testimony today will help serve as a roadmap of the things we need in order to get where we want to be.

Thank you for allowing me to appear before you today. I am happy to answer any questions.